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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,860	03/24/2004	White Bud	9730-3	6666
29941	7590	12/19/2005	EXAMINER	
GLENN C. BROWN, PC 777 NW WALL STREET, SUITE 308 BEND, OR 97701			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 12/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/808,860

Applicant(s)

BUD, WHITE

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because they fail to present reference characters for the goggles. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the goggles of claims 1 and 4, and the protective breathing

apparatus of claim 1 lack proper antecedent basis in the specification. No goggles are mentioned in the specification and the protective breathing apparatus is listed as a smoke mask (inconsistent terminology).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-6 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the at least two two-way radios" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Elimination of the word "the" before the terminology "at least" would appear to remedy the claim.

Claim 3 recites the limitation "the at least two portable lights" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Elimination of the word "the" before the terminology "at least" would appear to remedy the claim.

Claim 4 recites the limitation "the at least two pairs of goggles" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Elimination of the word "the" before the terminology "at least" would appear to remedy the claim.

Claim 5 recites the limitation "the at least two protective breathing apparatus" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

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Elimination of the word "the" before the terminology "at least" would appear to remedy the claim.

Claim 6 recites the limitation "the at least two pairs of gloves" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Elimination of the word "the" before the terminology "at least" would appear to remedy the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamblin (US 4,437,568) in view of Carpenter (US 5,884,760), Eycleshimer (US 5,102,360), and Curl et al (US 5,019,805).

Claims 1 and 4-7: Hamblin discloses a safety kit with a container **10**, a portable light **35**, two pairs of goggles **39**, two protective breathing apparatuses **37**, two pairs of gloves **29**, an alarm **22**, and an instruction placard **17**.

Hamblin lacks, or does not expressly disclose, a floor plan, at least one two-way radio, or the alarm having a visual indicator.

As to the floor plan, Carpenter discloses an emergency kit **10** with a floor plan **61** detailing an escape route (see for example Col. 4, lines 9-16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the kit of Hamblin with a floor plan as taught by Carpenter in order to provide the user with a detailed escape route.

As to the two-way radio, Eycleshimer discloses an emergency kit **10** with at least one two-way radio (content item **32**). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the kit of Hamblin with a two-way radio in order to enable the user to communicate with rescue personnel.

As to the visual indicator, the alarm of Hamblin is a smoke and flame alarm. Curl et al discloses a smoke detector with audible and visual alerts upon activation (see Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the alarm of Hamblin with a visual indicator as taught by Curl et al in order to warn a hearing impaired individual of smoke or flame. Curl et al discloses an LED indicator **48** to indicate power.

Claim 2: Although Eycleshimer only disclosing one two-way radio, Hamblin discloses clothing for two people. It would have been obvious to one of ordinary skill in

the art at the time the invention was made to provide a second radio to enable a second person to contact rescue personnel in case of separation. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 3: Although only disclosing one portable light, Hamblin discloses clothing for two people. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a second light to enable a second person to see in an emergency situation. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 8: Hamblin discloses instruction placard 17 and the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in claim 8. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claimed phone numbers and radio station listing since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no

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novel and unobvious functional relationship between the printed matter e.g. phone numbers and the substrate e.g. kit container which is required for patentability.

### ***Conclusion***


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Frank and Higson disclose emergency kits.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Greg Pickett  
Examiner  
27 October 2005

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700